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September 9, 2003

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Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, D.C. 20554

**Re: *In the Matter of: Federal-State Joint Board on Universal Service Petition of MPUC for Agreement with Changes in Definition of Service Areas for Exchanges Served by CenturyTel, et al.***  
**CC Docket No. 96-45, DA 03-2641**

Dear Ms. Dortch:

Enclosed for filing are the Reply Comments of the Minnesota Public Utilities Commission ("MPUC") concerning the MPUC's request for FCC Agreement to Redefine the Service Areas of Twelve Minnesota Rural Telephone Companies.

Sincerely,

KAREN FINSTAD HAMMEL  
Assistant Attorney General

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Enclosures

cc: Burl W. Haar

AG: #913278-v1



BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In the Matter of:

Federal-State Joint Board on  
Universal Service

CC Docket No. 96-45

Petition of the Minnesota Public Utilities Commission  
for Agreement With Changes in Definition of Service  
Areas for Exchanges Served by CenturyTel, Citizens  
Telecommunications Company, Frontier  
Communications of Minnesota, Inc., Mid-State  
Telephone Company, Scott-Rice Telephone,  
United Tel Co of Minnesota (UTC of Minnesota),  
Federated Telephone Company, Melrose Telephone  
Company, Winsted Telephone Company (TDS  
Telecom), Eckles Telephone Company (Blue Earth  
Valley Telephone Company), Lakedale Telephone  
Company, and Farmers Mutual Telephone Company.

DA 03-2641

**REPLY COMMENTS OF THE MINNESOTA PUBLIC UTILITIES COMMISSION**

The Minnesota Public Utilities Commission (“MPUC”) submits Reply Comments in response to the Comments filed by the Alaska Telephone Association (“ATA”), Joint Comments of Cellular Mobile Systems of St. Cloud and Minnesota Southern Wireless Company (“CMS/HickoryTech”), CenturyTel, Inc., Comments of Citizens Telecommunications Company of Minnesota, Inc. (“Citizens”) and Frontier Communications of Minnesota, Inc. (“Frontier”), and the Comments of the United States Telecom Association (“USTA”). The MPUC has asked the Federal Communications Commission (“FCC” or “Commission”) to agree to the MPUC’s service area definitions which differ from the “study areas” or existing “service areas” of CenturyTel, Citizens Telephone Company, Frontier Communications of Minnesota, Inc., Mid-State Telephone Company d/b/a KMP (TDS Telecom), Scott-Rice Telephone Company, United Tel Co of Minnesota (UTC of Minnesota), Federated Telephone Company, Melrose Telephone Company (diversiCOM), Winsted

Telephone Company (TDS Telecom), Eckles Telephone Company (Blue Earth Valley Telephone Company), Lakedale Telephone Company, and Farmers Mutual Tel Co.

The filed comments indicate there is misunderstanding as to the scope and intent of the MPUC's petition. By filing these reply comments, the MPUC wishes to clarify its petition to address some of these comments.

**I. The MPUC Proposes To Redefine The Service Areas Of Twelve Rural Local Exchange Carriers ("LECs") To The Wire Center Or Exchange Level.**

The MPUC petitioned the FCC to concur with its redefinition of service areas for 12 companies. The redefinition proposal for CenturyTel is straightforward--the MPUC requests agreement to redefine CenturyTel's service area, presently the same as its study area, to multiple service areas that are defined by exchange boundaries, just as it did for Frontier in a prior petition. MPUC Petition at 10. The MPUC has proposed a redefinition of service areas of 11 other incumbent rural telephone companies by *wire center* boundary, proposing "to classify the portion of each wire center in the service areas of 11 companies [not including CenturyTel, Inc.] served by Midwest Wireless as separate service areas for purposes of Midwest Wireless's ETC designation."<sup>1</sup> MPUC Petition at 10-11.

Thus, the redefinition proposal for the remaining rural carriers covered by the MPUC's petition includes multiple service areas, some which are defined by wire center boundaries, and others that include less than the entire wire center. For the latter sub-exchange definitions, the MPUC does not propose a redefinition of the incumbent's service area below the wire center that would affect the incumbent by adding administrative burdens, but rather to redefine such wire

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<sup>1</sup> The record in the MPUC proceeding does not indicate whether any of the affected exchanges include more than one wire center.

centers for *Midwest Wireless's purposes*<sup>2</sup> as that portion of each wire center for which Midwest Wireless is licensed by the FCC to provide wireless service and for which the MPUC has designated the company as an ETC.<sup>3</sup> In other words, Midwest Wireless's "service area" for which it has an ETC designation is smaller than the redefined service area (wire center boundary) for the incumbent local exchange carrier. This is necessary because the MPUC designated Midwest Wireless as an ETC for these areas and does not require Midwest Wireless to serve an area greater than its wireless territory (i.e., the entire service area of the incumbent LEC).

By these comments, the MPUC clarifies that it is requesting that the service areas of 11 companies covered by its petition be redefined or "disaggregated" to include multiple service areas with boundaries at the wire center level, and that CenturyTel's service area be redefined to include multiple service areas at the exchange boundary level. The MPUC previously redefined Frontier's Minnesota study area to include service areas disaggregated to the exchange level for each of Frontier's 45 Minnesota exchanges.<sup>4</sup> Thus, the MPUC is not requesting redefinition to the exchange level for Frontier.<sup>5</sup> For Midwest Wireless's purposes, however, its service area does not include the entire exchange or wire center in all Frontier exchanges and is presently analogous to its

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<sup>2</sup> By using the phrase "Midwest Wireless purposes," the MPUC means that the incumbent rural LEC should not be required to disaggregate cost zones below what is being used now. If the LEC's service area is its study area, unless the rural LEC receives permission to disaggregate further, Midwest Wireless will receive support based on the averaged study area in the portion of that LEC's area it serves.

<sup>3</sup> This proposal reflects the MPUC's decision and order to "petition the FCC to disaggregate, for ETC purposes, the service areas of the relevant incumbent telephone companies *to the extent necessary* to permit [Midwest Wireless] to obtain designation throughout its CMRS licensed service territory." MPUC Petition, Att. 1 at 15. (Emphasis added.)

<sup>4</sup> See *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, DA 00-2661, Petition of the Minnesota Public Utilities Commission for FCC Agreement to Redefine the Service Area of Frontier Communications of Minnesota, Inc. (filed Oct. 26, 2000) (FCC agreement effective Feb. 27, 2001) ("Western Wireless Petition").

<sup>5</sup> To the extent Frontier's wire centers conform to its exchange boundaries, no further redefinition may be required.

wireless footprint in those areas.<sup>6</sup> Thus, the MPUC petition seeks to redefine the service area(s) for each of the 12 companies.

Therefore, Citizens' assertion that the Petition does not request that the service area of 11 of the 12 companies be "disaggregated to the exchange level" misunderstands what the MPUC is requesting. The Petition requests Commission approval for a redefinition of service area for 11 companies disaggregated to the wire center level, and for one company to the exchange level. This is consistent with the resolution by the Commission in two recent proceedings.<sup>7</sup> For universal service support purposes, however, Midwest Wireless's service area must be defined below the wire center level because its wireless contour does not replicate entire wire centers in numerous instances.

## **II. The Commission Should Not Delay The Requested Redefinition for Midwest Wireless Purposes.**

Most of the comments urge the Commission to effectively "suspend" consideration of the MPUC's petition. Citizens and Frontier argue that the Commission should not consider the petition until the Commission resolves pending issues concerning certification of competitive ETCs with respect to the February 7, 2003 Joint Board Public Notice.<sup>8</sup> CenturyTel also suggests that the Commission should defer a decision on the MPUC's petition until after the Joint Board makes

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<sup>6</sup> It is unclear whether FCC concurrence is required for this definition as it reflects the area of Midwest Wireless's licensed wireless territory for which the MPUC has granted its request to be designated as an ETC in Minnesota.

<sup>7</sup> *Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-3181 (rel. Nov. 27, 2002) ("RCC Holdings"); and *Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-3317 (rel. Dec. 4, 2002) ("Cellular South").

<sup>8</sup> *Federal State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003) ("Joint Board Public Notice").

recommendations in that proceeding. CenturyTel Comments at 7-8. The ATA appears to argue for postponement of the proceeding pending Joint Board recommendations, but also urges that the Commission should consider informal statements of Joint Board members made at a public meeting on July 31, 2003 as part of the requirement in 47 U.S.C. § 214(e)(2) to take into account the recommendations of the Federal State Joint Board. ATA Comments at 6. MIC also argues that individual decisions related to disaggregation should be postponed while policies are being reviewed concerning universal service support levels and ETC designations. MIC Comments at 11. USTA apparently believes this matter should be referred to the Joint Board, urging “the Commission to find that this Petition is a part of that broader proceeding currently before the Joint Board, from which a recommendation will be provided to the Commission.” USTA Comments at 3-4.

There is no basis for deferring this Petition as these commenters suggest. To suspend consideration of the petition would only delay consumer choice to Minnesotans and defer the competitive offerings that Midwest Wireless is prepared to provide once it is able to fully serve its Minnesota territory. Midwest Wireless should not be denied the opportunity to offer its full range of services throughout its licensed territory simply because its wireless license does not follow wire center boundaries.

The issues presented by the filed comments are no different than those that have been presented in similar proceedings before this Commission. The Commission’s orders in the *RCC Holdings* and *Cellular South* petitions do not indicate that the redefinitions should be delayed for the reasons stated in the filed comments. In the *RCC Holdings* and *Cellular South* decisions, the Commission used the same standard that the MPUC used in this matter--the Joint Board’s standard. Therefore, until this standard is superceded or the Joint Board has issued new recommendations, it is appropriate to consider the concerns identified and discussed in the Joint Board Recommended

Decision: (1) minimizing rural cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other carriers; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.<sup>9</sup> *RCC Holdings*, Petition at 12-13. Although it is possible that significant changes may be made in the processes to designate ETCs and in the support they receive, the possibility is purely speculative at this point and should not be used as reason to delay support to a duly designated ETC such as Midwest Wireless. There simply is no support for the suggestions that the Joint Board's existing standard be disregarded.

Nor should the number of additional requests by wireless carriers operating in Minnesota that are presently pending before the MPUC be used as a reason to delay the MPUC's requested redefinition in this proceeding. The MPUC will consider the individual circumstances of each of those petitions before deciding whether to designate further ETCs in Minnesota. If it becomes necessary to redefine the service areas for incumbent LECs, the MPUC and this Commission will also consider them appropriately. It is premature, however, to foreclose any possible redefinitions that may be needed, or to deny them the benefit from the redefinition of incumbent LECs' service areas as requested in this proceeding that may also be necessary because of their wireless footprint. It would also be unfair to permit redefinition of service areas for the companies who can provide a wireless local exchange service option that qualifies for universal service support, and to deny the same benefit to other wireless carriers who did not make the first requests for an ETC designation that requires a service area redefinition. Such a result could have unintended and undesired anticompetitive repercussions within the wireless carrier industry.

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<sup>9</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, ¶¶ 172-74 (1996) ("Joint Board Recommended Decision").

CenturyTel argues that the Commission should postpone action on the MPUC's petition until the company has had an opportunity to evaluate whether to disaggregate support at the exchange level. CenturyTel Comments at 3. CenturyTel recognizes, as it must, that it has already been given the opportunity to evaluate disaggregation of its Minnesota study area, and that it chose not to do so on May 15, 2002. *Id.* Nothing, however, prevents CenturyTel from reevaluating its prior decision to choose Path One of the *RTF Order*.<sup>10</sup>

But more importantly, the Joint Board recommendations do not include this additional requirement for redefining service areas--with good reason. If this added burden were placed on ETC designees, the incumbent would have the opportunity to delay receipt of universal service funds by its competitors and thereby affect the ability of the competitors to offer a wireless universal service option throughout its licensed areas and its ability to invest in its network. It is not appropriate to allow an incumbent LEC to affect disbursement of universal service funding to its competitors in this manner.

None of the commentors have supported their argument with a valid and logical reason to delay the redefinition of any of the service areas included in the MPUC's petition. The Commission should not create additional barriers to new competitors by rejecting or delaying consideration of the MPUC's petition.

**III. There Is No Justification To Require Midwest Wireless To Serve The Entire Service Area Of Any Of The Incumbent Rural LECs Covered By The Petition.**

CenturyTel and MIC argue that Midwest Wireless should be required to serve the incumbent LEC's entire study area. CenturyTel argues that Midwest Wireless can do this by using a combination of its own facilities, roaming agreements and resale. CenturyTel Comments at 5. MIC

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<sup>10</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for* (Footnote Continued on Next Page)

also argues that Midwest Wireless should be required to serve the entire service areas of its members who are named in the MPUC's petition unless Midwest Wireless has demonstrated that it is unable to provide service throughout the study area. MIC Comments at 3.

There simply is no basis for such a requirement. This requirement would only make it more difficult for many competitors, including Midwest Wireless, to begin operating as an ETC and to provide added benefits to Minnesota consumers. Such a requirement could also create confusion among customers in the areas served by the incumbent LECs because these customers may be expecting a wireless service and not the resold wireline service of the incumbent.

One of the criteria that the MPUC and the Commission must address is the concern for "cream skimming." Only if cream skimming is a legitimate concern should Midwest Wireless be required to serve an area that conforms to the incumbent LEC's entire service area. The MPUC concluded that cream skimming was not a concern in this case, stating "the record does not support the suggestion that the company is targeting areas based on cost characteristics."<sup>11</sup> MPUC Petition, Att. 1 at 14. Further, because Midwest Wireless will target all areas in its licensed service territory, any correlation between its proposal and the actual cost characteristics of the areas it will serve appears to be coincidental.

The commenting parties in this case have identified no additional arguments other than those that were considered and rejected by the MPUC concerning cream skimming. Because cream skimming does not appear to be a legitimate concern, there is no justification to require Midwest

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(Footnote Continued From Previous Page)

*Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order, 16 FCC Rcd 11244 (2001) ("RTF Order").

<sup>11</sup> CenturyTel argues that Midwest Wireless "may receive artificially inflated support in some exchange areas, while declining to serve the higher-cost areas." *Id.* Although CenturyTel was not an individual party to the MPUC proceeding, the MPUC considered and rejected the similar cream skimming arguments made by other parties.<sup>11</sup> See MPUC Petition, Att. 1 at 13-14.

Wireless to take on additional burdens in order to serve all customers in the incumbent's service area. Such a requirement could be a significant barrier to competition in these areas of Minnesota.

**IV. The Proposed Service Area Redefinitions Will Not Impose Added Administrative burdens.**

Citizens and Frontier argue that rural carriers will incur substantial and excessive administrative burdens if the Commission concurs with the MPUC's redefinition proposal. According to Citizens and Frontier, the Commission should stay the consideration of the MPUC's petition because neither Citizens nor Frontier have disaggregated federal universal service support to the sub-exchange level. They further argue that "it is not clear that there is a reliable methodology for doing so. ... Developing such a methodology, applying it to the various affected exchanges, and then justifying the resulting universal service funding changes before the Minnesota Commission would indeed be a significant administrative burden." Citizens/Frontier Comments at 6. Citizens and Frontier further speculate that future ETCs could be designated for other parts of a particular exchange and the universal service funding might need to be further refined to accommodate each carrier's footprint. *Id.* at n.13.

Citizens and Frontier's concern is unfounded. Redefining a rural LEC's service areas by wire center boundary or exchange boundary does not require incumbent rural carriers to determine their costs on a basis other than the study area level or self-disaggregated service area level. *See RCC Holdings* at ¶ 41. The Commission has concluded that

[R]edefinition merely enables competitive ETCs to serve areas that are smaller than the entire incumbent rural telephone company's study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis. Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies is not at issue here.

*Id.* Similarly, this concern is not an issue in this proceeding. As noted in the Joint Comments of Cellular Mobile Systems of St. Cloud and Minnesota Southern Wireless Company, the MPUC

decision does nothing to change existing rural LEC boundaries or their universal service fund reporting, and it does not impact the universal service support they receive from the fund.

Lastly, MIC argues that the MPUC's petition "blurs the distinction between redefining study areas and redefining service areas." MIC Comments at 9. MIC asserts that redefinition of study areas would impose severe administrative burdens on local exchange carriers. The MPUC clarifies that it is not asking for any redefinition or waiver of a study area, and no inference should be drawn from the Petition that this is part of the request.

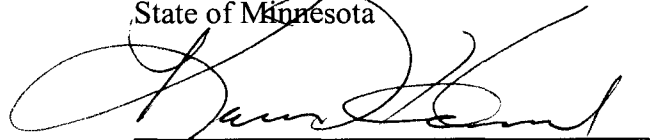
### CONCLUSION

The MPUC's petition complies with 47 C.F.R. § 54.207(c)(1) by providing the MPUC's proposed definition of Midwest Wireless's service areas and by providing the rationale therefor. The MPUC requests Commission agreement to redefine the service areas for the companies above-named in Minnesota as requested by the petition and as clarified in these comments.

Dated: Sept. 9, 2003

Respectfully submitted,

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State of Minnesota

A handwritten signature in black ink, appearing to read "Karen Hammel", is written over a horizontal line.

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